UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/74/Add.3
20 September 1997

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1992

Addendum

ZIMBABWE

[20 November 1996]

GE.97-18368 (E)

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* Available for consultation in the files of the Centre for Human Rights.

Introduction

1. The general background information on Zimbabwe is contained in the core document, which provides an overview of Zimbabwe and its people, covering such aspects as the ethnic and demographic characteristics of Zimbabwe, including its socio-economic and cultural indicators. It also contains information on Zimbabwe's general political structure and the general legal framework.

IMPLEMENTATION OF ARTICLES 1 TO 27 OF THE COVENANT

Article 1

2. Zimbabwe believes in the principle that all peoples have the right to self-determination, to determine their political status, to pursue their economic, social and cultural development and to freely dispose of their natural wealth and resources. It is Government's policy to preserve peace and good government. This is reflected by the support the Zimbabwe Government has given to various United Nations resolutions on the above rights.

3. With particular reference to the right to self-determination, Zimbabwe has provided various liberation movements with financial and material assistance through the recently dissolved Organization of African Unity Liberation Committee. Zimbabwe has since its independence articulated its obligation to support South African and Namibian liberation movements in their fight against colonialism and apartheid.

Article 2

4. The Constitution in section 11 provides that every person in Zimbabwe should be protected and entitled to the fundamental rights and freedoms of the individual whatever his race, tribe, place of origin, political opinions, colour, creed or sex. Chapter III of the Constitution guarantees specific rights such as the right to life, to personal liberty, to privacy, to personal security, freedom of expression, assembly and association and protection of the law.

5. It must be noted that the Constitution does not expressly prohibit discrimination on grounds of sex. However, Government is in the process of considering rectifying the omission once the Constitution Amendment (No. 14) 1995 Bill becomes law. The amendment had been prompted by the case of Rattigan and Others v. Chief Immigration Officer and Others 1994 (2) ZLR 54 (SC). In this case an alien man, married to a Zimbabwean citizen, was denied a residence permit by the Chief Immigration Officer in terms of the Immigration Regulations, 1979 (RGN 373 of 1979). In terms of the Citizenship Act [Chapter 4:01] an alien woman married to a Zimbabwean citizen is entitled to registration as a citizen on application. The right is not accorded to alien males married to Zimbabwean citizens.

6. The following are some of the pieces of legislation, which have been passed in Zimbabwe to provide the right to enjoyment of fundamental rights and freedoms:

(a) Immovable Property (Prevention of Discrimination) Act [Chapter 10:12]. The Act protects individuals from discrimination in respect of the sale, lease or disposal of immovable property and the financing of any such sale, lease or disposal on the ground of, among other things, sex and race;

(b) The General Law Amendments Act [Chapter 8:07]:

(i) Section 12 guarantees women's rights to hold public or civil offices or appointment subject to the same conditions on which such offices may be held by men;

(ii) Section 15 redresses the inequality between men and women by conferring majority status on African women who were perpetual minors prior to its enactment in 1982. African women could not enter any contractual transaction without the consent of either their fathers or husbands;

(c) Disabled Persons Act [Chapter 17:01]. The Act protects disabled persons from discrimination on the basis of their disability. Under section 4 of the Act, a National Disability Board has been established and its tasks are, inter alia, to formulate and develop measures and policies designed to achieve equal opportunities for disabled persons in education, employment, sporting activities, community and social services;

(d) Variation of Racial Trusts Act [Chapter 8:15]. The Act empowers any trustee of a trust to apply to the High Court for variation of a trust where it provides for the benefits in a manner which discriminates between persons on account of race;

(e) Labour Relations Act [Chapter 28:01]. Section 5 of the Act protects employees from discrimination on the basis of sex, religion, race and place of origin at employment places;

(f) Public Premises (Prevention of Racial Discrimination) Act [Chapter 8:12]. The Act abolishes the right to refuse admission to public premises on racial grounds. Any person who has been denied the right of admission on the grounds of race has a right to claim damages in any competent court. Any proprietor of public premises who contravenes the Act may have his licence suspended or cancelled.

7. It can safely be said that there is adequate legislation which promotes equality of people in Zimbabwe. The only hindrance is ignorance of the existence of an individual's right by the majority of people coupled with social and cultural inhibitions especially when it comes to women.

8. The Government of Zimbabwe promotes and ensures through teaching, education and publication the respect of the rights and freedoms contained in the Covenant through government ministries like National Affairs, Employment Creation and Cooperatives, Public Service, Labour and Social Welfare and Ministry of Justice, Legal and Parliamentary Affairs. Further, non-governmental organizations are permitted to carry out educational campaigns and courses on human rights. Organizations such as the Legal

Resources Foundation and the Raoul Wallenberg Institute of Human Rights and International Humanitarian Law (an international organization) conduct training workshops for police and prison officers, the armed forces and judicial officers.

9. In liaison with NGOs, pamphlets on basic laws have been produced in English and the two major vernacular languages which are Shona and Ndebele. Such pamphlets are on wills, domestic violence, women and rape, marriage and maintenance, to mention only a few. Information has also been produced as films such as Neria, Muchadura, Consequences, The Girl Child, and Your Child Too, featuring various aspects of family law.

10. It is essential to note that most of the educational campaigns are geared towards educating women; however, as a result there has been cultivated a general feeling that human rights issues have degenerated into gender issues. To strike a balance, Government must initiate programmes on human rights for all peoples of Zimbabwe, men, women and children.

11. The University of Zimbabwe has run a Diploma Programme in Women's Rights since 1994. Human Rights is also taught as a subject under the Masters in International Relations Programme. The school curriculum has now been written to include legal education in the syllabus. There is also a task force in place which is looking at the introduction of human rights education in schools.

12. The Ministry of Justice, Legal and Parliamentary Affairs has embarked on a programme to teach chiefs and headmen about the Constitution. If resources are available the Ministry intends to spread the educational campaign to other members of the society such as school headmasters and church leaders.

13. The Government has also set up an Inter-Ministerial Committee on Human Rights and International Humanitarian Law chaired by the Ministry of Justice, Legal and Parliamentary Affairs, which acts as Government's adviser on human rights and humanitarian law issues. The Committee recommends the ratification of human rights instruments and also advises on the need for legislative and administrative measures to comply with ratified instruments. One of the Committee's mandates is to organize and conduct seminars on human rights in order to improve community awareness. Unfortunately, due to financial difficulties, the Committee has not been able to undertake the task. It has, however, played a big role in improving the human rights situation in Zimbabwe.

14. As far as workers' rights are concerned, the Ministry of Public Service, Labour and Social Welfare has a Department of labour Relations which is obliged by the provisions of the Labour Relations Act [Chapter 28:01] to teach and train workers and employers on their rights at work. The Department of Labour Relations, with the assistance of the International Labour Organization and other donor agencies, organizes workshops and seminars in which employers and employees are invited to participate. The Department is also available to the public to offer assistance related to employer-employee relations. A handbook on the rights of workers and guidelines on the formation of workers' committees has since been published.

15. The National Social Security Authority, a parastatal established under the Ministry of Public Service, Labour and Social Welfare, complements efforts of the Department of Labour Relations by educating workers and employers on health and safety at work. Workers are also taught about their right to compensation when injured at work.

Remedies

16. Section 24 of the Constitution provides for the right of any person who alleges that the Declaration of Rights has been or is likely to be contravened in relation to him, to apply to the Supreme Court for redress. It also empowers a presiding officer in any inferior court to stop proceedings where a question arises relating to contravention of the Declaration of Right and to refer the question to the Supreme Court. The Supreme Court of Zimbabwe is also empowered under the section to issue orders or writs directing the enforcement of the Declaration of Rights.

17. In practice the Supreme Court has promoted human rights in various cases such as Catholic Commission for Justice and Peace in Zimbabwe v. Attorney General and Others 1993 (1) ZLR 242 (S). The Supreme Court passed an order to set aside and substitute the sentences of death with sentences of life imprisonment because of undue delays in executing four prisoners. The delay had been declared to be inhumane. The Executive did not challenge the Supreme Court order, thus accepting the independence of the judiciary in Zimbabwe.

18. The judiciary has jurisdiction over all issues of a judicial nature. Section 13 and 23 of the High Court Act [Chapter 7:06] gives the High Court original jurisdiction over all persons and matters (civil and criminal respectively) in Zimbabwe, subject to provisions of the Act or any other Acts. By virtue of section 26 of the High Court Act the High Court ensures that judicial proceedings are conducted fairly and that the rights of parties are respected when it exercises its powers to review criminal and civil decisions and proceedings of all inferior courts, tribunals and administrative authorities within Zimbabwe. Section 27 (1) of the Act provides for the grounds for review. These are:

(a) Interest in the case, bias, malice or corruption on the part of the judicial officer;

(b) Absence of jurisdiction on the part of the court, tribunal or authority concerned to deal with the matter;

(c) Gross irregularity in the proceedings or decisions.

19. Decisions of lower courts can only be reversed on review or appeal in the High Court or the Supreme Court in accordance with proper legal procedures.

20. The President can also use his presidential powers, as provided in section 34 of the Constitution, to pardon a convicted offender; grant a respite; substitute a less severe punishment; or suspend or remit the whole or

part of a sentence. These powers are not inappropriate or unwarranted interference with the judicial process as the powers are exercised after exhaustion of the judicial remedies.

Independence of the Judiciary

21. Zimbabwe recognizes and, through the Constitution of Zimbabwe, guarantees the independence of the Judiciary. The courts are entrusted with the promotion of the rights and freedoms guaranteed by the Convention without interference.

22. The Zimbabwean Constitution (sections 84 and 87) provides for the appointment of judges, their tenure of office and removal from office.

23. The independence of the judiciary is fortified by the Review and Appeal Systems which ensure that no one other than a member of the judiciary can set aside a decision of a court. This also applies to quasi-judicial proceedings. This was emphasized in the case of The Chairman, Public Service Commission and Anon. v. Chigwedere SC-56-90. In this case the Secretary of the Public Service attempted to influence a magistrate presiding over a Public Service inquiry. The Secretary was strongly criticized by the Supreme Court which pointed out that if the Commission was unhappy with the magistrate's decision they should have taken the decision on review to the High Court.

24. In Zimbabwe everyone has a right to be tried by the ordinary courts or tribunals using established legal procedures. However, members of the defence force are tried by a court martial only in case of violations of offences against army regulations. When they commit ordinary crimes they are tried by the ordinary courts.

Freedoms of expression and association

25. Judges and other judicial officers in Zimbabwe are entitled to freedom of expression, belief, association and assembly. However, because of the nature of their duties they restrain themselves in the exercise of these rights so that they preserve the dignity of their offices, and the impartiality and independence of the judiciary.

26. Judges and other judicial officers are free to form their own associations. The magistrates in Zimbabwe have formed a Magistrates Association.

Qualifications, selection and training

27. In Zimbabwe qualifications, ability and integrity are the criteria used in appointing judicial officers. There is no discrimination of any sort in the appointment of judicial officers. The qualifications of judges are provided for by section 82 of the Constitution. The Judicial Service Commission is consulted on the appointment of judges.

28. In the case of magistrates, section 7 of the Magistrates Court Act [Chapter 7:10] provides for the appointment and qualifications of magistrates. Though magistrates are appointed by the Public Service Commission their

advancement depends on comments on their professional work by Judges of the High Court and the Supreme Court and regional magistrates who review and scrutinize their work.

Conditions of service and tenure

29. The tenure of office of judges is guaranteed by section 86 of the Constitution which provides that a judge shall retire at the age of 65 unless he elects before that age to retire at the age of 70. Subsection (3) of section 86 provides that the office of a Judge of the High Court shall not be abolished during his tenure of office without his consent.

30. Judges and magistrates are promoted on merit.

Professional secrecy and immunity

31. There is no legislation which clearly states that a judicial officer is not a compellable witness in respect of information he got through the performance of his duties. However, no judicial officer in Zimbabwe has ever been compelled to give evidence on such matters. Therefore, what is required is clarification of what is already the accepted position.

32. Judicial officers cannot be sued in their personal capacities for improper acts or omissions committed or omitted during the course of duty.

Discipline, suspension and removal

33. The investigation of charges and complaints against a judge is provided for by section 87 of the Constitution. The matter is to be dealt with by a tribunal. However, misconduct by a magistrate is dealt with in terms of the Public Service Disciplinary Regulations S.I. 65 of 1992.

34. Section 87 (1) of the Constitution provides that a judge can be removed from office for inability to discharge his duties or for misbehaviour.

35. In Zimbabwe the suspension or removal proceedings of judges are provided for in section 87 (2) to (g) of the Constitution.

Other bodies

36. The Ombudsman's office was created under the Ombudsman Act [Chapter 10:10], in terms of sections 107 and 108 of the Constitution, to deal with people's grievances. Its functions include the investigation of cases of maladministration in governmental departments, parastatals and statutory bodies controlled by Government. It, however, has no jurisdiction over cases arising within the commercial and informal sectors. The Ombudsman cannot investigate complaints against the President, the President's Office, Attorney-General and Secretary for Justice, Legal and Parliamentary Affairs or any member of their staff in relation to the conduct of any prosecution, the conduct of any civil action or any legal advice given to Government. The Ombudsman can only recommend that corrective action be taken but cannot enforce its decisions.

37. The above protection afforded is applicable to both nationals and aliens.

Article 3

38. Government has done a lot and is still in the process of enhancing the status of women. The Government of Zimbabwe has undertaken to establish equality for women in the political, economic, social and cultural spheres and has passed laws that remove discrimination against women and established institutions and measures that further women's advancement and problems. Zimbabwe has enacted the following legislative and administrative measures to promote the status of women:

(a) The Constitution of Zimbabwe. Section 11 of the Constitution mentions sex as one of the prohibited forms of discrimination. However, the Constitution of Zimbabwe does not specifically protect women from discrimination on the ground of sex. Government is at an advanced stage of amending the Constitution so as to include sex as one of the grounds on which the law or any public authority may not discriminate. (See the discussion of the Rattigan case in article 2);

(b) Electoral Act [Chapter 2:01]. The Act enables women to vote in general and by-elections and to stand for election in presidential and parliamentary elections. It must, however, be noted that although women rarely stand for electoral office, they constitute the majority of voters. It is most unfortunate that for various reasons, inter alia cultural and social, they vote for male candidates. For instance, in the general elections of 1990 and 1995 males dominated in Parliament. For the 1990-1995 period, of the 150 Members of Parliament only 17 were female. Of the 17 female members, 4 were appointed by the President and 1 was ex officio, a provincial governor. In the recently held parliamentary elections for the 1995-2000 period 21 females were returned, of whom 2 were appointed by the President and 1 is ex officio;

(c) Deeds Registries Act [Chapter 20:05]. Section 15 of the Act entitles women to execute deeds and documents without the assistance of their husbands, as was previously the case;

(d) Matrimonial Causes Act [Chapter 5:13]. Women are now awarded part of the matrimonial assets in the event of divorce, judicial separation or nullity of marriage. The award depends on the woman's contribution to the assets both in monetary terms and in services rendered;

(e) Immovable Property (Prevention of Discrimination) Act [Chapter 10:12]. The Act protects individuals from discrimination in respect of the sale, lease or disposal of immovable property and the financing of any such sale, lease or disposal on the ground of, among other things, sex and race;

(f) The General Law Amendments Act [Chapter 8:07] and the Labour Relations Act [Chapter 28:01]. See article 2.

39. Most educational institutions are dominated by males. In an attempt to correct the imbalance, the Ministry of Higher Education has implemented a policy which provides for the admittance of all female applicants who meet the basic qualifications for entry into higher educational institutions. Males

have to enter the institutions on a more competitive basis since they already dominate the institutions. Recently the University of Zimbabwe adopted affirmative action for women to enter university on lesser entry points than their male colleagues.

40. In a bid to promote the status of women and remove discrimination against women, Government has acceded to and is party to the following human rights instruments:

(a) Convention on the Elimination of All Forms of Discrimination against Women;

(b) Convention on the Nationality of Married Women;

(c) Convention on the Political Rights of Women;

(d) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage.

Government is at an advanced stage in preparing to ratify the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

41. Although Government has made remarkable progress in promoting the status of women, there is still a lot which should be done. For instance, there is a need to legislate for progressive marriage and inheritance laws. At the moment, there are dual systems of marriage and inheritance, one governed by general law and the other governed by customary law discriminating against Africans, especially women.

42. In the case of inheritance, a wife cannot succeed to or share in her husband's property as his heir under customary law. In the event of her husband dying without a valid will a widow may find herself with nothing irrespective of her late husband's abundant wealth. Although there is recourse for widows and dependants of the deceased who are disadvantaged or marginalized in the distribution of the property under legislation such as the Deceased Persons Family Maintenance Act [Chapter 6:03], the majority of widows are unaware of the legislation. Where dependants are aware of the legislation, sometimes they are frightened by the whole litigation process involved and consequently fail to prevent the misappropriation of the deceased's estate. However, Government, through the Ministry of Justice, Legal and Parliamentary Affairs, has circulated a White Paper on Marriage and Inheritance in Zimbabwe to get contributions from the public on the best way to amend the existing laws so as to attain laws which are non-racial and non-discriminatory.

43. Government has also set up institutions to deal with women's problems in general. The Ministry of Community Development and Women's Affairs was set up in 1981 to deal with women's issues and community development. In 1988 the Ministry was reduced to a department within the newly created Ministry of Political Affairs. The Department now falls under the Ministry of National Affairs, Employment Creation and Cooperatives. The President has also appointed a Minister of State in the President's Office responsible for

women's affairs. The role of the Department of Women's Affairs is to promote the development of women and their integration in economic, social, political, and cultural activities. The Department has adopted and supported programmes and activities aimed at eliminating all forms of discrimination against women, creating an environment conducive to the effective and meaningful participation of women in all sectors of national development and enhancing women's quality of life.

44. The work of the Department of Women's Affairs is also complemented and supplemented by NGOs. There are over 200 NGOs in Zimbabwe, many of which focus on the rights of women. Some are welfarist in their approach. Some encourage income-generating projects in order to improve women's economic status. Yet others believe in the empowerment of women through strategies that link the law and development.

45. There is still a traditional division of work in employment with women to be found in the main traditional occupations like teaching, nursing and secretarial work, while men are to be found more in construction, banking, medicine, and scientific and technical work.

46. For statistics and other information on the equality of men and women, refer to the report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

Article 4

47. The Constitution, in section 31 J, provides for the President to declare a state of emergency and the subsequent approval of such declaration by Parliament. Section 25 of the Constitution, as read with schedule 2, provides for the derogation during a state of emergency of the rights enshrined in its provisions 13, 17, 20, 21, 22 and 23. No derogations are permitted to the provisions similar to articles 6, 7, 8, 11, 15, 16 and 18 of the Convention.

48. Emergency Powers Act [Chapter 11:04]. Under section 3 of the Act, the President is empowered to make regulations for a state of emergency. The regulations may provide, where necessary or expedient, for the preventive detention of any person in the interests of defence, public safety or public order. Regulations may also be passed empowering any minister so designated to issue orders for the preventive detention of any person. Any act done under the Act, however, has to be in conformity with the constitutional provisions.

49. The Detainees Review Tribunal established under paragraph 2 (4) of schedule 2 to the Constitution reviews every case of persons detained under any law providing for preventive detention. The Tribunal consists of a chairman, who shall be a person who has been a judge of the Supreme Court, and two other persons who are qualified to be judges of either the High Court or Supreme Court, a magistrate or a legal practitioner with seven years' experience.

Article 5

50. No comment.

Article 6

Protection of the right to life

51. The right to life is recognized and protected in Zimbabwe. The Constitution in section 12 (1) provides for the protection of the right to life at any time, save in execution of a sentence imposed by a court in respect of a criminal offence. Section 12 (2) provides for other situations where the right may be derogated from. This includes situations where, in circumstances permitted by the law and provided the use of such force is justifiable, a person may be deprived of his life by authorities of the State. The circumstances are outlined as:

(a) For the defence of any person from violence or for the defence of property;

(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) For the purpose of suppressing a riot, insurrection or mutiny or of dispersing an unlawful gathering; or

(d) In order to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war.

Section 12 (2) of the Constitution is traditionally read with section 42 (2) of the Criminal Procedure and Evidence Act [Chapter 9:07] which defines the circumstances in which an officer of the State will be deemed justified in taking the life of another person when effecting a lawful arrest. The use of such force must be reasonably justifiable in the circumstances of the case to overcome the resistance.

52. Only a peace officer or any other private person authorized or required under the Criminal Procedure and Evidence Act to arrest or assist in arresting a suspected offender, may seek protection under the defence of justifiable homicide in terms of section 42 (2) of the Act. It is pertinent to note that section 2 of the Criminal Procedure and Evidence Act defines a peace officer to include, among others, any police, prison or immigration officer but not a member of the armed forces.

53. Under the Protection of Wildlife (Indemnity) Act [Chapter 20:15] any person, police officer, member of the defence force or officer of the Department of National Parks and Wild Life Management is indemnified against any liability in respect of any act done in good faith in connection with or suppression of unlawful hunting of wildlife.

54. Murder is unlawful in Zimbabwe. It is defined as unlawfully and intentionally causing the death of a human being who is alive. Culpable homicide is also unlawful. It is defined as the unlawfully killing of another person negligently, or intentionally, but in circumstances of partial excuse. Examples of culpable homicide are negligent driving, negligent use of a firearm, medical negligence, etc.

55. Under the present law, a wrongful act or omission causing death can give rise to an action for damages. Dependants of a deceased person wrongfully killed are entitled to bring an action for damages for loss of support from the wrongdoer. Compensation is normally confined to loss of support and funeral expenses and is based on the actual pecuniary loss.

Right to life of the child

56. Concealment of Birth Act [Chapter 9:04]. The Act makes it an offence for a person to conceal the birth of a "child". A child, according to the decision in S. v. Maramba 1994 (1) ZLR 326, is one who has reached a stage of development where, after separation from its mother, is capable of breathing independently either naturally or with the aid of a ventilator.

57. Infanticide Act [Chapter 9:12]. This Act creates the offence of infanticide. The elements of the offence are:

(a) The accused must be a woman;

(b) The victim must have been the accused's own child killed within six months of its birth;

(c) The killing must have been either intentional or carried out by means which involved a substantial risk to the child's life;

(d) At the time of the killing, the balance of the accused's mind must have been disturbed as a result of giving birth to the child.

The maximum sentence that can be imposed for infanticide is five years. Where the above elements are not satisfied then a verdict of murder may be returned.

58. The Act was enacted amid concern that women were paying for a crime in which both sexes had played a role since deserted or divorced women were the ones mostly driven to kill their children.

59. Termination of Pregnancy Act [Chapter 15:10]. The common law in Zimbabwe makes it an offence to abort. There are exceptional circumstances where therapeutic abortion is lawful. These are outlined in the Act as follows:

(a) Threat to life of the mother;

(b) Serious threats of permanent impairment of the mother's physical health;

(c) Serious risk that the child will be born with a physical or mental defect which will permanently and seriously handicap him;

(d) Reasonable possibility that pregnancy resulted from unlawful intercourse.

Infant mortality

60. The Government, through its National Programme of Action for Children, has made great strides to improve basic health and welfare. Primary health care is a main focus of this programme through which two thirds of children under one year were fully immunized by the early 1990s. This led to a drop in the infant mortality rate from 88 per 1,000 live births in 1980 to below 61 per 1,000 live births by 1990. In the same period the under-five mortality rate was reduced from 104 per 1,000 to 87 per 1,000. The aim of Government is to further reduce the infant mortality from the current level of 61 per 1,000 to 40 per 1,000 and to reduce the under-five mortality rate from 87 per 1,000 to 58 per 1,000 by the year 2000.

61. Malnutrition remains one of the major causes of long-term morbidity and mortality in children and the incidence is twice as high in the rural areas as in the urban areas. In recognition of the severity of the problem of malnutrition, Government is implementing programmes based on a national surveillance scheme throughout the country. Supplementary feeding programmes for children under five and in schools up to grade 3 have also been instituted countrywide.

Death penalty

62. Zimbabwe still maintains the death penalty on its statute books. The judiciary has, however, questioned the constitutionality of hanging as the manner of carrying out the death sentence (see S. v. Ketose S-64-90). In response to this, the Constitution was amended in 1990, affirming hanging as a form of executing the death sentence.

63. The Government has, however, progressively taken steps to abolish the sentence for any offence except the most serious ones. Under the Criminal Law Amendment Act, the scope of the death penalty was limited. It was removed from, for example, the Law and Order Maintenance Act [Chapter 65] under which the death penalty was permissible for terrorism.

64. The death penalty may now be passed by the High Court upon an offender convicted by it of murder (see section 336 (1) (a) of the Criminal Procedure and Evidence Act [Chapter 9:07]). Further, section 3 (2) of the Geneva Conventions Act [Chapter 11:06] provides for the imposition of the death penalty on a person found guilty of a grave breach of any of the four Geneva Conventions of 1949 involving the wilful killing of a person protected by the Conventions. The sentence may also be imposed for certain military offences (see sections 70 and 71 of the Defence Act).

65. In terms of section 338 of the Criminal Procedure and Evidence Act, the High Court shall not pass sentence of death upon an offender who

(a) Is a pregnant woman;

(b) Is over the age of 70 years; or

(c) At the time of offence was under the age of 18 years.

66. A person sentenced to death has a right of appeal to the Supreme Court.

Crime of genocide

67. Zimbabwe has ratified the Convention on the Prevention and Punishment of the Crime of Genocide and fully subscribes to its provisions. The Convention has not yet been incorporated into the domestic law. Efforts are already under way to come up with legislation to incorporate the same into municipal law. A subcommittee of the Interministerial Committee on Human Rights and Humanitarian Law at the time of reporting had written a memo to the Minister of Justice, Legal and Parliamentary Affairs, recommending the incorporation of the Convention in the domestic law.

Pardon or commutation of death sentence

68. Under section 31 J of the Constitution anyone sentenced to death shall have the right to seek pardon or remission of sentence. The President is also empowered, by way of the Clemency Order, to proclaim a General Amnesty under which he may pardon persons convicted of specific offences. The provisions were used in 1990 when the President pardoned certain classes of prisoners including those convicted of abandoning babies, political dissidents, and members of security forces in respect of offences committed during the anti-dissident era.

69. An offender sentenced to death has to present a petition to Parliament for pardon. The petition may be tabled before Parliament. This applies to everyone on death row regardless of race, colour or religion.

70. Under section 377 of the Criminal Procedure and Evidence Act, the President may, on his own initiative, exercise the prerogative of mercy and conditionally commute the punishment of a person sentenced to death to any punishment provided by any law.

71. Before 1993 prisoners had recourse through the courts for commutation of sentence where there had been a delay in executing them. In 1993 when the Government announced its intention to execute four prisoners sentenced to death some four to six years previously, the Catholic Commission for Justice and Peace in Zimbabwe, a human rights organization, successfully applied for a stay of execution. The organization, in the case of Catholic Commission for Justice and Peace in Zimbabwe v. Attorney-General 1993 (1) ZLR 242 (SC), requested the Supreme Court to set aside and substitute life imprisonment for death sentences, arguing that the delay in executing the prisoners constituted inhumane treatment and was therefore a violation of section 15 (1) of the Constitution. The Supreme Court had previously rejected the prisoners' appeals against the death sentences and the President had rejected their petitions for clemency. The Court found that the inordinate delays in the executions were indeed inhumane treatment. The Court granted the requested order and commuted the death sentences to life imprisonment.

72. The legislature's response to this decision was an amendment to the Constitution in 1993. The legislature inserted subsections (5) and (6) in section 15 of the Constitution which provide that:

(a) Any delay in the execution of a death sentence is not a contravention of section 15 (1) and thus is not inhuman and degrading treatment;

(b) Contravention of section 15 (1) will not entitle a person to a stay, alteration or remission of sentence (including a sentence imposed before the commencement of the amendment).

Article 7

73. The Constitution in section 15 provides for the protection of every person's right to be free from torture or inhuman or degrading treatment or punishment. Zimbabwe is also a party to other international instruments including the African Charter on Human and Peoples' Rights and the International Convention on the Elimination of All Forms of Racial Discrimination - which contains specific provisions against torture and other forms of ill-treatment. The Government is currently considering ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, nothing contained in or done under the authority of any law shall be held to be in contravention of the Constitution to the extent that the law in question makes provision in the interests of defence, public safety, public order, public morality or public health.

Corporal punishment

74. Corporal punishment is permitted by section 15 (3) of the Constitution on any person under the age of 18. The punishment can be inflicted by someone in loco parentis or in execution of a court order. Such punishment is deemed not to be inhumane or degrading.

75. The courts have tended to adopt a wider meaning to the provisions in section 15 of the Constitution. In the case of S. v. A Juvenile 1989 (2) ZLR 61 (SC), it was held that judicial corporal punishment of juveniles violated the protection enshrined in section 15. The case involved an 18-year-old male convicted of an aggravated assault and sentenced to receive four cuts with a light cane in accordance with section 330 of the Criminal Procedure and Evidence Act. This decision followed another one in the matter of S. v. Ncube 1987 (2) ZLR 246 (SC) where the Supreme Court ruled that judicial adult whipping constituted a violation of section 15. The court ruled that the mode of administering the punishment, not the punishment itself, was barbaric, inhuman and degrading.

76. The Criminal Procedure and Evidence Act outlines conditions under which such punishment will be taken. For example, it is specified that the parent or guardian of the juvenile has to be present when sentence is inflicted. A medical practitioner has to examine the juvenile and declare him fit to undergo the punishment. The debate in legal/social circles continues, however, over the ethics of whipping and its effectiveness as a punishment.

77. The Supreme Court has also declared solitary confinement and spare diet to be an inhuman or degrading punishment in violation of section 15 (1) of

the Constitution in the review judgement of the matter of S. v. Masitere 1990 (2) ZLR 289 (SC). This has resulted in the suspension of the passing of such a sentence even in the prison disciplinary system.

78. The Education (Disciplinary Powers) Regulations, S.I. 298 of 1990, are a restatement of the common-law right or power of schoolmasters to inflict reasonable and moderate corporal punishment on pupils. There are stringent conditions laid down for administering the punishment to ensure that it does not result in physical injury or psychological trauma. Some of these conditions relate to the types and gravity of offences for which such a form of punishment may be applied, the officer who has the authority to administer it, the conditions under which it may be administered, the severity of such punishment and its mode of administration. All such cases where punishment was administered must be recorded giving details of the nature of the offence, name of pupil, names and signature of the one who administered it as well as that of the witness, the number of strokes and the tool used to administer it. Girls may not be subjected to corporal punishment. Pupils who receive such punishment, together with their parents, have the right to appeal to the Ministry and to the courts of law for redress where they feel such punishment was not justified, unfair, excessive, or physically or psychologically injurious. The Ministry may then institute disciplinary procedures against the officers.

79. The Magistrates Court Act [Chapter 7:10] sets out procedures for dealing with complaints about police mistreatment from persons on remand. Police officers can be prosecuted for assault or any other forms of abuse on persons in custody. A victim of such mistreatment can be awarded damages.

80. The Children's Protection and Adoption Act [Chapter 5:06] prohibits the subjection of children to inhuman or degrading treatment, e.g. prostitution.

81. The Mental Health Act [Chapter 15:06] makes provision for the admission into care, treatment, review and discharge of persons who are mentally ill. The provisions are aimed at protecting the patients, be they civil or criminal patients, from inhumane and degrading treatment. The Act is currently being reviewed in order to bring it into line with current thinking both nationally and internationally to ensure maximum humane treatment of every patient.

Medical and scientific research

82. The Government, in its bid to ensure humane treatment of its citizens in medical institutions, has established a Medical Research Council to ensure that no medical research or experimentation is carried out without the free consent of the subjects. The Medical Research Council also sits as the Ethics Committee which examines research proposals on ethical considerations before permission is granted for the research to be carried out.

83. Also established under the Medicine, Dental and Allied Professions Act [Chapter 27:08] is the Health Professional Council which annually issues practising certificates to registered medical practitioners. The Council is empowered, in the public interest, to withdraw a practising certificate for any malpractice.

84. The Medical, Dental and Allied Professions (Information) Regulations, 1993 (S.1 93 of 1993) were designed to destroy the "conspiracy of silence" that sometimes exists within the medical, dental and allied professions. Under the Regulations, every health practitioner and every health institution is obliged to provide, on request, the Registrar of the Council with any information relating to possible improper or disgraceful conduct or gross incompetence of another medical practitioner. Failure to provide the information is an offence punishable by a fine of $3,000 or six months' imprisonment.

85. Recently, in S. v. Mcgown 1995 (1) ZLR 4, Dr. Mcgown, an experienced anaesthetist and an expert in his field was charged with five counts of culpable homicide arising out of negligence. One of the charges related to the administering of morphine using a new technique and thus experimenting without informing the patient of the procedure and without the patient's consent. The evidence adduced at the trial was that a doctor was not obliged to notify the professional body that he or she was conducting clinical trials. The court observed that it was unsatisfactory and improper that the Health Professional Council should not be aware of such trials.

Article 8

86. The Constitution in section 14 (1) guarantees protection against slavery or servitude or forced labour. Section 14 (2) of the Constitution lists various forms of labour which are excluded from the definition of forced labour.

87. Zimbabwe has also ratified the Slavery Convention of 1926 as amended, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. Slavery is not a specific criminal offence and no penalty is prescribed for it. However, there are legislations in Zimbabwe that indirectly provide for situations envisaged in the article:

(a) Criminal Law Amendment Act [Chapter 9:05]. Prostitution and other forms of servitude arrangements, e.g. brothels, are prohibited under the Act;

(b) The Criminal Procedure and Evidence Act [Chapter 9:07] prohibits the adoption of children for financial gain. This covers the sale of children. The Act further provides for the establishment of juvenile courts; the protection, welfare, and supervision of children; the establishment and registration of institutions for the reception and custody of children and juveniles; the treatment of children at such institutions; and those matters connected with the welfare of children, juveniles and minors. Thus, children who are victims of sale, prostitution and pornography and are therefore categorized as children in need of care are afforded protection and care under this Act. Sale of children, prostitution and pornography have not manifested themselves as major problems, although there are a few isolated cases;

(c) The National Service Act [Chapter 11:08] provides for compulsory national service. Persons who are considered medically unfit or whose

bona fide religious beliefs inhibit their enrolment may be considered for exemption. However, there has been no notice of call-up since the passing of this enactment;

(d) The Civil Protection Act [Chapter 10:06] provides for service in emergencies and work which is part of normal civil obligations. A Civil Protection Organization is established under the Act. A National Civil Protection Fund is also set up for the purpose of developing and promoting civil protection. The President may under this Act declare a state of disaster with effect from a specified date and in a defined area. While a declaration of a state of disaster is in force civil protection officers are empowered, among other things, to direct any person to perform any work or render any service which as a result of the disaster is reasonably necessary for the purpose of dealing with the situation. A declaration may remain in force for three months unless it is removed earlier.

88. Section 358 (3) (c) of the Criminal Procedure and Evidence Act provides for the imposition of community service instead of a sentence of imprisonment. The order may be imposed in the following cases:

(a) Robbery - where there is no weapon or actual violence, where only a small amount of property has been taken and the accused is a first offender;

(b) Theft - where the value of property involved is very low and the accused is a first offender or has a family to support.

Community Service orders are not granted in serious offences like murder, attempted murder, rape, attempted rape, armed robbery and car theft.

Article 9

The right to liberty

89. The right to personal liberty is one of the fundamental rights guaranteed under the Constitution. Section 13 (1) provides that "No person shall be deprived of his personal liberty save as may be authorized by law in any of the cases specified in subsection 2". The circumstances under which a person may be deprived of his liberty are outlined in subsection 2 as including mental illness, vagrancy, drug addiction, educational purposes, immigration control and pursuant to a court order, upon reasonable suspicion of his having committed or being about to commit an offence.

90. Police powers of arrest and detention are governed by the Criminal Procedure and Evidence Act [Chapter 9:07]. The Act provides for two types of arrest, namely arrest with warrant and arrest without warrant. Under this Act a peace officer is authorized to arrest without warrant any person who commits any offence in his presence or whom he finds attempting to commit an offence. A peace officer can also arrest without warrant any person who he has reasonable grounds to suspect of having committed any offence listed in the First Schedule to the Act.

91. "Peace officer" is defined to include not only police officers but a range of other officers like prison officers and immigration officers. It

also includes certain persons designated by the regulating authority. Some of these persons are designated for specific purposes like officers and inspectors of the Department of Parks and Wildlife. Intelligence officers of the internal branch of the Central Intelligence Organization and police officers have extensive powers of arrest. The definition excludes members of the armed forces.

92. Civilians also have powers of arrest, though limited. Thus, they may in appropriate cases effect a citizen's arrest.

93. Arrest of a person under military law is governed by Part VI of the Defence Act [Chapter 94]. Under that Act any member found committing an offence in terms of the Act or who is on reasonable grounds suspected of having committed any such offence may be arrested by a member and taken into custody. Persons arrested under military law still have to have their constitutional rights protected so they have to be informed of the reasons of their arrest or detention and they have to be brought without undue delay. See Hokonya v. Director of Prisons and Another 1989 (1) ZLR 317 where a member of the defence force was arrested and detained for 12 days without being advised of the reasons for his detention.

Reasons for arrest

94. A person who is arrested must be informed as soon as reasonably possible the reasons for the arrest and the nature of the offence (see the Constitution of Zimbabwe, sect. 13 (3)).

Prompt appearance before judicial officer

95. The common-law principle that an arrest becomes unlawful if there is an unreasonable delay in taking the suspect before the court has also been incorporated into our legislation. Section 32 of the Criminal Procedure and Evidence Act stipulates that the maximum period of police detention is 48 hours. The period can be extended up to 96 hours provided an application is made by a senior police officer to a judge or magistrate.

Bail

96. There are two types of bail generally available to an accused person. Bail can be granted by an authorized police officer or by the court. The accused person may be required to enter in recognizance, with or without surety, and to comply with such conditions as would ensure his or her appearance at court at the time and place specified. If the applicant is refused bail by a police officer he or she may apply for bail again when appearing before the magistrates court, or may apply at any High Court.

Early trial

97. The right to an early trial is one of the rights which is guaranteed under section 18 of the Constitution. Under the section a person charged with a criminal offence is entitled to a fair hearing within a reasonable period of time. The question of what is reasonable time was discussed in depth in the matter of In re Mlambo 1991 (2) ZLR 339. The applicant had been arrested on

30 October 1986 and charged with having committed several counts of fraud between April 1984 and July 1986. The applicant was remanded for trial 12 times. Charges were withdrawn before plea and later reinstated in April 1991 when the State sought to proceed with the trial. The accused sought a permanent stay of proceedings on the ground that the delay of four and a half years violated his constitutional right. The presiding magistrate referred the issue to the Supreme Court for its decision. The Supreme Court, relying on decisions from other jurisdictions, came to the conclusion that the effect of the lengthy delay was such as to deny the applicant the right to a fair hearing of his case in violation of section 18 of the Constitution. The court therefore granted an order for permanent stay of the proceedings.

Fast track court system

98. In order to try and reduce the backlog in pre-trial cases the courts, in liaison with the police, have introduced the above system. Special courts have been assigned to deal specifically with offences which can be tried expeditiously.

Habeas corpus

99. An application may be made to the High Court by the person detained or any interested party on behalf of the detainee.

Judicial review

100. The High Court has powers to examine procedures leading to the detention of a person to ensure his rights are observed and respected. Further, section 24 (1) of the Constitution provides that any person alleging that his rights under the Declaration of Rights have been infringed may apply to the Supreme Court for redress.

Compensation

101. The Constitution in section 13 (5) provides for the payment of compensation to any person unlawfully arrested or detained by any other person. The compensation shall be from the person or authority on whose behalf the arrest or the detention was effected. For example in the matter of Chikavave v. Nyamusara S-7-91 where the applicant who was detained overnight in police cells and released next morning without explanation or apology was awarded Z$ 2,000 in general damages.

Article 10

102. According to section 13 of the Constitution, no person shall be deprived of his personal liberty save as may be authorized by law, for example, in the execution of an order of a court made in order to secure the fulfilment of an obligation imposed on him by law, upon reasonable suspicion of his having committed or being about to commit a criminal offence or for the purpose of preventing the spread of an infectious or contagious disease.

103. The maintenance and administration of prisons falls under the Ministry of Justice, Legal and Parliamentary Affairs. Part VII of the Prisons Act

provides for official visits to prisons by the Minister of Justice, Legal and Parliamentary Affairs, magistrates, religious leaders and prison aid societies. During the visits the above officials are permitted to inquire into complaints by the prisoners, the quality and quantity of prison food, and peruse records on the prisoners. Provisions for the treatment of prisoners are in the Prison (Detained Person) Regulations, 1959. For example, prisoners are entitled to receive one letter and one visit a month.

Work and work training

104. Convicted prisoners are expected to work except where exempted for medical reasons. Work available is carpentry, tailoring, motor mechanics and farming. Such activities are encouraged in order to prepare the prisoners for their release. As a result prisons are to some extent self-sufficient when it comes to clothing and food production.

Medical services

105. Medical practitioners provide both physical and psychological medical assistance to prisoners in terms of the Prisons Act [Chapter 7:11].

Remission

106. One-third remission of sentence is automatic in terms of the Prison (Detained Persons) Regulations, 1959 and may only be reduced for bad conduct.

Mental hospitals/institutions

107. The treatment of mentally handicapped detainees is regulated. A Mental Board has been set up to monitor and ensure the humane treatment of mental patients.

Separation of accused prisoners

108. The provision is wholly complied with. The Prisons Act and Prison Service Regulations, 1977 provide for the separation of accused persons from convicted prisoners. Accused persons are also subject to separation according to classes depending on factors such as the seriousness of the offence. They are further exempted from work.

109. Accused juveniles are separated from adults. Juveniles below the age of 17 are referred to special institutions for juveniles which are created under the Children Protection and Adoption Act. In the prisons, juveniles are separated from adults.

Article 11

110. Zimbabwe fully complies with this article. No person can be imprisoned on the basis of inability to fulfil a contractual obligation. The courts can commit a person to prison for failure to comply with a court order to make certain payments in discharge of a debt provided it is proved that such failure to pay was due to wilful refusal. (See section 26 of the Magistrates Court Act [Chapter 7:10] and section 16 of the High Court Act [Chapter 7:06].)

Article 12

111. The right to liberty of movement and the freedom of choice of residence are both wholly guaranteed under section 22 (1) of the Constitution. They are also fully recognized in domestic laws such as the Citizenship Act [Chapter 4:01] and the Immigration Act [Chapter 4:02]. Citizens and residents have an unfettered freedom of movement and choice of residence. In practice, aliens have the same right to move anywhere and to set up residence.

112. The right to leave the country is fully respected in Zimbabwe. The right is determinable under the Immigration Act. There are no restrictions on aliens living in Zimbabwe provided they comply with the provisions of the Act.

113. A Zimbabwean passport is issued only to a citizen of Zimbabwe under the provisions of the Immigration Act. Persons departing from Zimbabwe are required to do so through identified ports of exit where they will be required to present themselves to an Immigration Officer. The officer needs to be satisfied that the person travelling has all the necessary documentation before he can leave the country. Persons failing to meet those requirements may be denied exit.

Restrictions

114. Section 22 (3) provides for the limitation of the right to movement by permitting the enactment of laws that make provision:

(a) For the imposition of restrictions on the freedom of movement of persons in the interest of defence, public safety, public order, public morality or public health;

(b) For the imposition of restrictions on the acquisition or use of land or other property in Zimbabwe;

(c) For the imposition of restrictions by order of a court on the movement or residence within Zimbabwe of any person or any person's right to leave Zimbabwe

(i) In consequence of his having been found guilty of a criminal offence under the law of Zimbabwe or for the purpose of ensuring that he appears before a court for trial for such a criminal offence or for proceedings preliminary to a trial;

(ii) For proceedings relating to his extradition or lawful removal from Zimbabwe; or

(iii) For the purpose of ensuring that he appears before a court as a witness for the purpose of any criminal proceedings;

(d) For the imposition of restrictions on the movement or residence in Zimbabwe of persons who are neither citizens of Zimbabwe nor regarded by virtue of a written law as permanently resident in Zimbabwe or for excluding or expelling from Zimbabwe any person who is not a citizen of Zimbabwe;

(e) For the imposition of restrictions by order of a court on the rights of any person to leave Zimbabwe that are required for the purpose of ensuring that he appears before a court or other adjudicating authority as a party or witness or to secure the jurisdiction of the court or other adjucating authority as a party or witness or to secure the jurisdiction of the court or other adjudicating authority for the purpose of any civil proceeding.

115. The Supreme Court, in the matter of Rattigan and Others v. The Chief Immigration Officer and Others 1994 (2) ZLR 54 (SC), has reinforced the right of aliens to freedom of movement. In that case the Supreme Court declared that an alien male has freedom of movement in Zimbabwe by virtue of being married to a Zimbabwean woman. Denial of such a right would mean denying the woman her freedom of movement. In Patricia Ann Salem v. Chief Immigration Officer and Another 1994 (2) ZLR 287, which was an application by a woman citizen resident to extend her mobility rights to her husband to lawfully engage in employment, the Supreme Court further extended the protection expressed in section 22 (1) of the Constitution to freedom of movement. The Supreme Court therefore declared that the husband's right to reside in any part of Zimbabwe had been contravened by the two respondents. It ordered the first respondent to issue to the husband authority to remain in Zimbabwe and that he be accorded the same rights as are enjoyed by all permanent residents of Zimbabwe, including the right to engage in employment or other gainful activity in any part of Zimbabwe.

Refugees

116. Refugees have a right to movement provided they carry on their persons specified identity cards. They have no freedom, however, to choose their own residence.

117. Since independence Zimbabwe has been admitting asylum-seekers, necessitating the promulgation of an Act on refugee matters - the Zimbabwe Refugee Act [Chapter 4:03]. Section 1 (h) of the Act provides that the Minister responsible for the Act may designate places in areas in Zimbabwe within which all recognized refugees and protected persons shall live.

118. Zimbabwe has hosted over 150,000 refugees in the camps and a further estimated 100,000 Mozambicans who have settled in the communal and commercial farming areas. The numbers have now substantially decreased following a voluntary repatriation programme which started in June 1993 following the Peace Accord signed in Rome between Renamo and the Mozambican Government.

119. Zimbabwe is party to

(a) Convention relating to the Status of Refugees;

(b) Protocol relating to the Status of Refugees;

(c) Convention Governing the Specific Aspects of Refugee Problems in Africa of the Organization of African Unity.

In acceding to the first convention Zimbabwe made a reservation declaring the right to designate a place/places of residence for refugees.

Article 13

120. Section 22 (3) (d) of the Constitution provides for the imposition of restrictions on aliens in Zimbabwe and their possible expulsion from Zimbabwe.

121. The Immigration Act [Chapter 4:02] regulates entry into and departure from Zimbabwe. It also provides for the prohibition of entry into and the removal of certain persons from Zimbabwe. The Act also provides for the control of aliens.

122. The Immigration Regulations RGN No. 373 of 1979 outline the procedure for the expulsion of an alien. Aliens may be expelled for various reasons such as:

(a) Engaging in unlawful employment contrary to the Immigration Act and Regulations;

(b) Exceeding a period of 12 months without a valid residence permit;

(c) Being a prohibited person. A prohibited person, in terms of the Immigration Act, includes any person or class of person deemed by the Minister on economic grounds or habits of life to be an undesirable inhabitant. It also covers any person convicted of a specified offence, any person suffering from prescribed diseases, or who is a prostitute or homosexual. Prohibited persons are entitled to appeal against an immigration officer's notice to leave Zimbabwe. The person may do so by lodging a notice of appeal within the time allowed with the magistrates court having jurisdiction in the matter. A copy of the notice of appeal which also outlines the reasons against expulsion is also delivered to the immigration officer concerned. If the prohibited person is in custody, a copy will be served on the officer in charge of the prison where he is detained. A prohibited person may be represented at the hearing. Witnesses may also be called at the hearing. The magistrate may in his decision determine whether or not the appellant is a prohibited person and either dismiss or allow the appeal accordingly.

Refugees

123. Section 15 of the Refugees Act [Chapter 4:03] provides for the expulsion of recognized refugees and protected persons. Under this provision the Minister, in consultation with the Minister responsible for the Immigration Act, may order such expulsion as he considers necessary or desirable on the grounds of national security or public order. A written notice is served on the person he intends to expel informing him of the intention to expel him and the grounds and the country to which he will be expelled. He is also informed of his right to make representations to the Minister. The recognized refugee or protected person may then, either personally or through a legal representative, lodge with the Minister written representations. In his representations he may address the possibility of his being persecuted or of his life or freedom being threatened in the country to which he is being expelled. The Minister will give due consideration to the representation

before ordering an expulsion. The execution of the expulsion order may be delayed to enable the recognized refugee or protected person to seek admission to another country.

Extradition

124. Under the Extradition Act [Chapter 9:03] the Minister of Home Affairs may enter into extradition agreements with other countries. A request for extradition should be accompanied by a warrant of arrest for the person concerned and a statement of the sentence likely to be imposed against the person to be extradited. In the case of a Zimbabwean there should be evidence as would establish a prima facie case in a court of law in Zimbabwe.

Transfer of Offenders Act

125. The Transfer of Offenders Act [Chapter 7:14] provides for the transfer to prison in their countries of origin of persons convicted within Zimbabwe. The Act also provides for a like transfer of persons convicted outside Zimbabwe. The transfer of foreign offenders from Zimbabwe is subject to: proof of citizenship/residence; at least six months' imprisonment remaining to be served; an application being approved by the Ministry of Justice, Legal and Parliamentary Affairs; acceptance by the specified country of the transfer.

Article 14

Equality before the courts

126. The Constitution in section 23 (1) (b) provides for equal treatment before the courts by prohibiting being treated in a discriminatory manner by any person acting by virtue of any written law in the performance of the functions of any public office.

Right to a fair hearing and representation

127. Section 18 of the Constitution, which guarantees every person's right to the protection of the law, further provides that if any person is charged with a criminal offence, the person shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. Such person shall be permitted to defend himself in person or, save in proceedings before a local court, at his own expense by a legal representative of his own choice. In the case of Paweni v. Minister of State Security 1984 (1) ZLR 236 the Supreme Court reaffirmed the right of a detainee to instruct and consult his legal adviser privately.

128. The trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

129. Under common law the audi alteram parte rule (which means both sides have to be heard before a decision is made) also applies where an individual's rights may be affected. This rule is of general application and must be adhered to unless clearly excluded by statute.

130. Further, in practice, legal representation in criminal proceedings is afforded to indigent persons through the provisions of the Legal Assistance and Representation Act [Chapter 9:13]. It is the duty of either a magistrate or judge to issue an unrepresented party to a criminal case with a certificate authorizing that such party be offered legal representation by the State. In murder cases it is mandatory that the accused be represented. If the accused cannot afford legal representation, he is afforded representation pro deo. This right is guaranteed under section 19 (d) of the Constitution and provided for in the High Court Rules, 1971 (SI 1047 of 1971).

Public hearings

131. All court proceedings are generally open to the public (see section 194 of the Criminal Procedure and Evidence Act). Exceptions include juvenile hearings in Juvenile Court proceedings or any other court where a juvenile is the accused or is a witness and the court directs that in the interest of justice the proceedings be held in camera.

132. High Court and Supreme Court decisions are published in law reports and circulated. The press is allowed to publish articles in respect of proceedings in an open court. However, by virtue of sections 195 and 197 of the Criminal Procedure and Evidence Act, publication by radio, television or any document of the identity of a juvenile accused or witness is prohibited unless the publication is ordered by the court where it is just and equitable in the public interest. Section 196 prohibits the publication of the identity of witnesses where the accused is charged with acts of a sexual nature.

Presumption of innocence

133. Section 18 (3) (b) of the Constitution provides for the presumption that an accused person is innocent until proven guilty as a fundamental principle of Zimbabwean law. The burden or onus of proof rests on the State to prove the guilt of the accused person. The prosecution must in all criminal proceedings prove its case beyond reasonable doubt.

Prompt information of the nature of charges in a language he understands

134. The right is guaranteed under section 18 of the Constitution. English is the standard language used in all court proceedings and court documents. Interpreters are also available in court where it is necessary that communication be in the vernacular languages such as Shona and Ndebele. The court will on request for the benefit of an accused or a witness grant permission for specialist linguists to attend. The court may request the State to arrange for such service. The right applies to aliens as well as to nationals.

Securing attendance of witnesses

135. The Constitution in section 18 (3) (e) accords the accused or his legal representative the right to cross-examine a witness called by the State. An accused or his legal practitioner, however, has to secure the attendance of and carry out the examination of witnesses to testify on his behalf. Defence

witnesses, like prosecution witnesses, are issued with subpoenas to attend court. Failure to attend court after having been duly subpoenaed may result in a warrant of arrest issued by the court against the defaulter.

Accused's testimony

136. The Constitution and the Criminal Procedure and Evidence Act provide that an accused person is competent but not compellable to testify in his trial. He may elect to give sworn or unsworn testimony. Confessions that are obtained through undue influence, force or duress are inadmissible.

Procedures for juveniles

137. When a juvenile is arrested, a parent or guardian shall be advised of the arrest and shall attend at the station of arrest. Any questioning of juveniles and any submission of statements is done in the presence of the parent or guardian.

138. The Criminal Procedure and Evidence Act provides for special provisions relating to the punishment of juveniles. Any person below 18 years may be referred to a Juvenile Court and dealt with under the Children Protection and Adoption Act instead of being fined or given a custodial sentence. The Juvenile Court may make an order to place the juvenile in a reform school or a training institute established in terms of the Act.

Appeal

139. The right of appeal and to have conviction and sentence reviewed is provided for in the Magistrate Court Act, the High Court Act and the Supreme Court Act.

Autrefois acquit and *autrefois convict*

140. The pleas of *Autrefois acquit* and *autrefois convict* exist in Zimbabwe and are guaranteed in section 18 (6) of the Constitution. (See also Mlauzi v. Attorney-General 1992 (1) ZLR 260 (S).)

Article 15

Retroactive application of criminal laws

141. In Zimbabwe a person cannot be tried for a criminal offence if it did not constitute an offence at the time it was committed, nor can a heavier penalty be imposed than the one existing at the time of the offence. The Constitution in section 18 (5) provides:

> "No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is more severe in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed."

142. The courts, in interpreting this constitutional provision in S. v. Kalize S-190-90, held that section 18 (5) of the Constitution prohibits the passing of laws after an offence has been committed which increase with retroactive effect the penalty that may be imposed for that offence.

143. Section 51 (5) of the Constitution provides that an Act of Parliament shall come into operation on the day of its publication in the Gazette or on a day specified in an Act. This is a restatement of the common law rule on statutory interpretation that retroactivity is not generally permissible except where permitted expressly or by necessary implication (see Agere v. Nyambuya 1985 (2) ZLR 336 (SC)).

Article 16

144. Zimbabwe law recognizes all individuals as persons.

Article 17

The right to privacy

145. Section 17 of the Constitution offers everyone protection for the privacy of his home and from arbitrary search of the person or property or the entry by others into his premises. Exceptions are allowed where it is done under a law making provision for such derogation in the interests of defence, public safety, public order or morality. It is also necessary for the enforcement of the law in circumstances where there are reasonable reasons for believing such search or entry is necessary for the prevention, investigation or detention of a criminal offence or for seizure of any property which is the subject of a criminal offence. Part VI of the Criminal Procedure and Evidence Act also provides for powers of arrest, search and seizure, fingerprinting and identification parades. The Defence Act [Chapter 11:02] also outlines the powers of arrest and search of members of the force or his premises. The searching officer has, however, to obtain authority from a prescribed officer. An oath must be sworn that there are reasonable grounds for suspecting that there is upon the member or upon his premises stolen property or something which may be used as evidence of the commission of an offence.

Monitoring of communications

146. The Postal and Telecommunication Services Act [Chapter 12:02], section 73, gives the President power to direct the Postmaster-General to intercept any postal articles or telegrams and deliver these to a specified State employee in the interest of public security or the maintenance of law and order. The President may also direct the suspension of telecommunication services in respect of a person named in the directive. Section 72 of the Act provides for the detention of postal articles or telegrams by an officer-in-charge, on his own initiation, on request by a commissioner or police officer, where criminal activity is suspected. The postal articles or telegram may be surrendered to the police. The Attorney-General should also be informed of the surrender.

147. Unlawful tapping of telephones is a punishable offence in terms of section 58 of the Act. A sentence of up to seven years may be imposed on an offender.

148. The Prison Regulations, 1956 provide the Commissioner of Prisons with powers to restrict and supervise letters to and from and visits to prisoners. Officers in charge of prisons have the power to censor letters to and from prisoners.

Monitoring of economic crime

149. The Serious Offences (Confiscation of Profits) Act [Chapter 9:17] has given police officers wider powers of search and seizure including the grant of search warrants by telephone. In terms of section 57 a police officer may apply to a judge for a monitoring order directing financial institutions to give information to the Commissioner of Police on financial transactions conducted through an account with that financial institution by a particular person.

Article 18

Freedom of thought, conscience and religion

150. These rights are guaranteed under the Constitution in sections 11, 19 and 21. According to section 19 of the Constitution, except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of conscience, freedom of thought and of religion, freedom to change his religion or belief and freedom, whether alone or in community with others and whether in public or private, to manifest and propagate his religion or belief through worship, teaching, practice and observance. However, nothing contained in or done under the authority of any law shall be held to be in contravention of a person's right to freedom of conscience to the extent that the law in question makes provision in the interests of defence, public safety, public order, public morality or public health.

151. In the education system the learners' right to freedom of thought, religion and conscience has been made an integral part of the pedagogical process. Since independence, Zimbabwe's curriculum and pedagogical practices have promoted the adoption of democratic pedagogical practices where children are encouraged to think, question, hypothesize, experiment and analyse freely. The Ministry of Education believes that creativity, innovativeness and problem-solving abilities can only be developed and enhanced by promoting the freedom of thought and expression.

Freedom of religion

152. The development of education in Zimbabwe was spearheaded by missionaries at colonization. Thereafter, the different religious groups played an increasing role in education both through the provision of schools and through the promotion of political, social, cultural and civil awareness among learners. Today various churches still run their own schools and some universities.

153. Every child is also free to attend any school of his/her choice. As such, parents and their children have the freedom to manifest their religion and beliefs by choosing a school which promotes those religious ethics which are consistent with their persuasion. However, children of one religion have the right of access to a school whose religion may be different from theirs, and they will not be required to relinquish their religion as a condition for acceptance or continued attendance. Therefore, a religious group has the right, in line with existing regulations, to establish a school which promotes its own set of values.

154. The Ministry of Education has included Religious and Moral Education as a subject in the school curriculum right from the beginning of primary education. The Ministry's syllabus requires that this subject be truly Religious and Moral Education rather than religious and moral instruction or indoctrination, at least in the classroom situation. The drawing up of new Religious and Moral Education syllabuses and sensitization and orientation of teachers to the importance of playing an open and neutral role with respect to religion is evidence of the Ministry's commitment to the protection of individual freedom of thought, religion and conscience. The peaceful coexistence of religions is therefore promoted through education.

155. In Zimbabwe there are a few religious minorities, however, whose beliefs and practices may interfere with other fundamental human rights. The Ministry, therefore, discourages such practices, e.g. when parents deny their children access to education, health services, etc. on grounds of religion. It exercises caution, however, when doing this to ensure that there is no conflict between the right to one's religion and the individual's right of access to certain basic services.

156. Freedom of religion is also guaranteed under the prison system. Offenders are allowed to pursue their individual religious beliefs. Under the Prisons Act ministers of religion and other accredited representatives of religious bodies are allowed to visit prisons, to hold religious services and give religious instruction.

Article 19

Freedom of expression

157. The right to freedom of expression, which extends to the freedom to hold opinions and to receive and impart ideas and information without interference, is guaranteed under the Declaration of Rights under the Constitution. It is guaranteed in sections 11 and 20. It is, however, not an absolute and unlimited right. The right may be limited in the sense that restrictions may be imposed in the interest of protection of defence, public safety, public order, public morality or public health, etc. There are also restrictions aimed at protecting the reputations and private lives of persons. Any restrictions imposed, however, must not exceed those which are reasonably justifiable in a democratic society.

158. Under the Privileges, Immunities and Powers of Parliament Act [Chapter 10] it constitutes contempt of Parliament to publish a defamatory statement reflecting on the proceedings or character of Parliament or a

Committee of Parliament or to publish a defamatory statement concerning a member of Parliament in respect of his conduct in Parliament or in a Committee of Parliament.

159. The Law and Order Maintenance Act [Chapter 11:07] prohibits the publication of subversive statements. Section 44 of the Act sets out statements which are deemed subversive such as statements that:

(a) bring the President into contempt;

(b) Incite hostility towards any section of the community of a particular race, religion or colour;

(c) Incite people to oppose lawful acts of government officials in the maintenance of public order or safety.

Freedom of expression vis-à-vis the media

160. Freedom of speech and of the press exist in Zimbabwe. Section 20 of the Constitution forms the basis upon which freedom of the press has been protected in the Constitution. Freedom of the press, like any other freedom under section 20, is circumscribed by the law of defamation and contempt of court.

161. This constitutional right enables any organization to establish papers without legislative requirements; thus, there is no institutional framework which could be identified as a stumbling block to press freedom. During the pre-independence era, and as far back as 1965, freedom of the press was curtailed by legislation. Under the Emergency Powers (Censorship) Order 1965 (FGN 737K of 1965) all publications of whatever nature could only be published with the approval of a censor officer from the Ministry of Information. The Emergency Powers (Dissemination of Information) Regulations, 1965 (FGN 737J/1965), empowered the Minister of Information to issue orders authorizing designated officers to take over, control and direct any printing or publishing firm. During the Rhodesian regime publications which were critical of the Government, e.g. The African Daily News, Moto in 1974, Umbowo in 1976 and The Zimbabwe Times in 1978, were banned. Since independence Zimbabwe has successfully decolonized and democratized the information process, thus creating the present freedoms of the press and of expression. However, there have been suggestions from the mass media that the right to freedom of the press should be entrenched in the Constitution. The suggestion is still under consideration.

162. People's participation either as individuals or through their various organizations, such as trade unions, political parties, youth movements, women's guilds, commercial bodies and religious organizations, facilitates the establishment of an open and democratic society. These organizations or associations are therefore a forum for people to express their views. However, persons who intend to hold public political meetings must apply for and obtain permission from police authorities or the Ministry of Home Affairs.

Broadcasting

163. The Zimbabwe Broadcasting Corporation (ZBC) has an exclusive right to broadcast. The ZBC is a parastatal run by a Board of Governors under the auspices of the Minister for Information, Posts and Telecommunications. There are four national broadcasting stations on radio catering for the various sectors of society. One of the stations is broadcast in most of the vernacular languages. One is devoted to educational programmes. The ZBC also runs two television stations.

164. Debate is currently taking place on the possibility of introducing private broadcasting stations.

Telecommunications

165. The Posts and Telecommunication Services Act [Chapter 12:02), under section 26, also grants exclusive monopoly to the State to operate telecommunication service. In a recent case, however, this monopoly has been challenged. In the matter of Retrofit (Pvt) Ltd. v. The Posts and Telecommunications Corporation and the Attorney-General of Zimbabwe (intervenor) SC 136/95 the applicant, a company carrying out an electrical engineering business in Harare, had sought a licence to provide the public with a mobile cellular radio telecommunication service. Respondent is a statutory body which operates telecommunication services throughout the country and internationally. The Corporation refused, claiming a monopoly on the service based on section 26 of the Act. Applicant brought an action in terms of section 24 of the Constitution that the monopoly held by the Corporation in the operation of the public telecommunication services and its inability under the law to licence amounted to a contravention of section 20 (1) of the Constitution as it curtailed the freedom of expression. The court held that section 26 (1) of the Act, insofar as it grants PTC a monopoly in maintaining public telecommunications, was indeed inconsistent with section 20 (1) of the Constitution.

Copyright

166. Copyright is protected under the Copyright Act [Chapter 26:01]. Zimbabwe is a signatory to the Berne and Universal Copyright Conventions.

Censorship

167. The Government always ensures that societal morals are safeguarded; all literature thus has to be reviewed before publication. Part II of the Censorship and Entertainment Control Act [Chapter 10:04] provides for the appointment of a Censorship Board and its functions. The Board is appointed by the Minister of Home Affairs. It is currently composed of two committees each of which has nine members. The first is tasked with handling Film Viewing whilst the second is the Publications Committee. Each committee has representatives from the private sector and from government Ministries such as Education, Foreign Affairs, Information, Home Affairs (Police) and Finance (Customs and Excise). The Board examines articles or public entertainment acts and approves them before they are brought to public attention. Cinematograph films, film advertisements, publications, pictures, statues and

records which are indecent or obscene or offensive to public morals are prohibited under the Act and the Board may seize such items and dispose of them. The Board under the Act also has been granted authority to issue licences to video clubs which may be cancelled if holders contravene the Act.

168. Any person who is aggrieved by a decision of the Board may appeal against that decision to an Appeal Board which is appointed by the Minister. The decision of the Board is not suspended by such appeal. If any question of law arises from the decision of the Appeal Board a person can bring an action in the High Court. The Minister may also alter decision of the Board and Appeal Board if the decision is not in the public interest. The Minister's decision is not reversible.

169. Under the Act police officers, probation officers, customs officers and postal telecommunications officers have the power to search any premises and seize publications, pictures, records, etc. for examination by the Board or for the purposes of any criminal proceedings.

Civil servants

170. Under the Official Secrets Act [Chapter 11:09], all civil servants are required to keep confidential information relating to their work, duties and responsibilities. Public comment is also restricted under certain conditions.

Parliamentary privilege

171. Section 49 of the Constitution provides for the enactment of an Act to regulate the powers, privileges and immunities of Parliament. The Privileges, Immunities and Powers of Parliament Act [Chapter 2:08] provides for Parliament's freedom of speech. Section 5 of the Act guarantees freedom of speech and debate or proceedings in or before Parliament and any parliamentary committee. Such freedom shall not be impeached in any court or place outside the Parliament.

The law of defamation

172. The law of defamation seeks to balance two competing interests. On the one hand it recognizes the right of the individual to be afforded protection against harm to the reputation. On the other hand, it also recognizes the right to free speech and to proper access to information.

173. A defamatory statement is defined under law as that statement which is published and which injures the person to whom it refers by lowering him in the estimation of reasonable ordinary persons. A defendant can only escape liability if he can successfully raise such defences as justification, fair comment or privilege.

174. The courts will award damages where defamation has been proved. Some of the factors the court will take into account in assessing the level of compensation are the character and status of the plaintiff, the nature of the words used and the intended effect thereof, the extent of the publication and whether or not the defendant subsequently made attempts to rectify the situation by way of a retraction or apology.

Article 20

175. The Law and Order Maintenance Act [Chapter 11:07] has a provision prohibiting any propaganda for war. It also regulates political demonstrations, the procedure for carrying out same and permission granting authority.

176. Section 44 (1) (e) of the Law and Order Maintenance Act prohibits any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Article 21

177. Sections 11 (b) and 21 of the Constitution provide for the right to assemble freely with others subject to limitations which are designed to ensure that the exercise of the said right does not prejudice the rights and freedoms of others or public interest. Employees are further afforded the right to assemble freely at workplaces by virtue of Parts VI and VII of the Labour Relations Act [Chapter 28:01]. Workers are permitted by the law to assemble into either workers committees or trade unions in which they air their grievances. However, such assemblies are undertaken within the purview of the law.

178. It must be noted that although public gatherings and processions are constitutionally permitted, sections 6 and 8 of the Law and Order Maintenance Act requires that a permit must be obtained from the regulating authority before a public gathering or procession is undertaken. The constitutionality of section 6 of the Law and Order Act has been challenged in the Supreme Court in the case of In re Davison Mhunhumeso and other others 1994 (1) ZLR 49. In this case six members of the Zimbabwe Congress of Trade Unions had applied, pursuant to section 6 of the Law and Order Maintenance Act, for permission to stage a peaceful public procession. The application was turned down by the regulating authority with no reasons offered. The Union proceeded with the demonstration. The applicants argued that section 6 was ultra vires sections 20 and 21 of the Constitution in that the discretionary power of the regulation authority is uncontrolled. They further argued that the effect of the provision has to deny basic rights unless it could be proved that the procession would lead to a breach of the public peace and that it was not reasonably justifiable in a democratic society.

179. The Court ruled that though the power to prohibit or control a public procession was necessary in the interest of public safety or public order, the limitations provided in the Law and Order Maintenance Act were not reasonably justifiable in a democratic society. The Government of Zimbabwe has realized the need to repeal the Law and Order Maintenance Act so as to make it conform with the Constitution. The relevant ministries are currently working on a bill which will repeal and replace the existing Act.

Article 22

180. Section 21 of the Constitution guarantees a person's right to assemble freely and associate with other persons and to form or belong to political parties or trade unions, or other associations to protect his interests.

Trade union membership

181. Section 27 (1) of the Labour Relations Act provides that "subject to the provisions of this Act, any group of employees may form a trade union".

182. In Zimbabwe trade unions are allowed to function freely provided that they do so in terms of the provisions of the Labour Relations Act. There are 101 registered trade unions in Zimbabwe. The membership is about 200,000.

183. Since 1990, the Government has stopped giving directives to undertakings and now allows free collective bargaining.

Formal conditions

184. In terms of section 28 of the Labour Relations Act a trade union must, within six months of its formation, adopt a written constitution providing for:

(a) The qualifications for membership, including membership fees if any;

(b) The right of any person to membership if he is prepared to abide by the rules and conditions of the membership;

(c) The number of officials and office bearers, their powers and functions and their appointments of election;

(d) The holding of annual general meetings;

(e) The calling and conduct of meetings of members or representatives of members of the trade union;

(f) The prohibition of discrimination against any member or class of member on grounds of race, tribe, place of origin, political opinion, colour, creed or sex;

(g) The amendment of the constitution;

(h) The winding up of the trade union; failure to so provide in the constitution shall constitute an unfair labour practice by the trade union concerned.

185. There are no restrictions placed upon the exercise of the right to join and form trade unions by workers - except that each worker must accept the rules of the union that he/she wants to join.

186. Workers are allowed to strike as a matter of legal right, but they must follow the procedures laid down, e.g. the workers must give 14 days' notice to the employer, explaining in detail the reasons for the strike.

187. Under section 23 of the Labour Relations Act managerial employees can form their own managerial workers' committees as well as managerial employees'

associations (trade unions). The provisions prohibit the appointment or election of managerial employees in associations other than managerial employees' associations.

188. The Government allows trade unions to federate and join international trade union organizations. The local unions apply to the Ministry of Labour (ILO Desk) and their applications are processed by the ILO Desk which advises the Minister.

189. The Zimbabwe Government is seriously considering ratifying the ILO Freedom of Association and Protection of the Right to Organize Convention (No. 87) and Right to Organize and Collective Bargaining Convention (No. 98).

190. In addition trade unions and individuals are free to join any political parties of their own choosing and there are several political parties which operate freely.

191. The police, members of the armed forces and civil servants are not provided for in the Labour Relations Act.

Public Service Act [Chapter 16:04]

192. Section 24 of the Act recognizes associations or organizations representing any or all public employees. Section 73 of the Constitution provides for the establishment of the Public Service Commission whose function, among others, is to set the terms and conditions of service of employees. The Commission is supposed to consult with employees or their organizations in setting the terms and conditions.

193. The Minister of Public Service is empowered by section 24 (1) to declare any association or organization a recognized association or organization representing public employees. It is further empowered to withdraw or revoke the recognition. The Act does not provide for the circumstances under which the Minister may refuse to recognize an association or organization or revoke the recognition. The Minister's powers amount to interference in the establishment and administration of employees' organizations. This also entails interference with the employees' freedom of association.

194. The employees' rights are further curtailed under the Public Service (Maintenance of Service) Regulations, 1990 (SI 258 of 1990). Under the regulations, work stoppage is prohibited. The Public Service Commission is empowered to summarily dismiss members of the public service involved in work stoppage.

The Prison Act [Chapter 7:11], The Defence Act [Chapter 11:01], The Police Act [Chapter 11:10]

195. None of the three Acts, unlike the Public Service Act, provide for the recognition of employees' organizations or associations.

Article 23

196. The Government of Zimbabwe recognizes the existence of the family as a natural and social unit. Protection is offered to the family through various legislations and government departments like the Ministry of Health and Child Welfare, the Ministry of National Affairs and Employment Creation and the Ministry of Public Service, Labour and Social Welfare.

197. There is no social security scheme in Zimbabwe at the moment. However, plans are at an advanced stage to put one in place. A parastatal, the National Social Security Fund (NASSA), has been set up under the National Social Security Act [Chapter 17:04]. NASSA has been tasked with working out the modalities of a comprehensive social security scheme.

198. The State takes care of the health of the family by the provision of health facilities to the public in general. Families who cannot afford hospital fees are exempted from paying such fees or are assisted by the Department of Social Welfare. The family unit is also protected by the provision of prenatal care, maternity care and post-natal care through the maternal and child health services provided by the Government.

199. The Government has provided information on the physical and mental health of the population in several publications to the United Nations through UNICEF and the World Health Organization, for example:

(a) Children and Women in Zimbabwe - A Situation Analysis Update, July 1985-July 1990. UNICEF and the Republic of Zimbabwe;

(b) Zimbabwe National Programme of Action for Children - Our Second Decade of Development. Harare, 1992.

(c) Children and Women in Zimbabwe - A Situation Analysis.

200. The Government has a national health policy outlined in the Ministry of Health 1994 publication, Planning for Equity in Health - A Sectoral Review and Policy Statement. The policy is in line with the World Health Organization's goal of "Health for All by the Year 2000" and the publication outlines how this goal is to be achieved.

201. The Primary Health Care Approach has been adopted as part of the health policy of Zimbabwe. The approach coincided with the country's desire for social justice through the redressing of the inequalities inherited from the colonial past. The following measures have been taken to implement Primary Health Care, thereby reducing some of the gross disparities between particularly the rural and urban populations of the country:

(a) Accessibility of health services. An extensive construction and upgrading of rural health facilities has been undertaken to ensure that the sick do not have to walk for distances over 8 kilometres to reach a health facility. In addition to all the other health facility-provision endeavours, the Government, through phases I and II of the Family Health Projects, is undertaking the construction and upgrading of 240 district hospitals and 133 clinics;

(b) Affordability of health services. Free medical care was established for those earning Z$ 150 per month at independence and the threshold was raised to Z$ 400 per month in 1992. It has been realized that the threshold is no longer realistic. Consequently, with effect from March 1995, rural clinics and health centres no longer charged for any services regardless of the status of the patient. An essential drugs list was adopted to ensure that the cost of the drugs to the country was affordable while at the same time meeting the population's need for essential drugs;

(c) Maternal and child care. The Ministry is doing away with the mainly curative health services established by the colonial administration which served the interests of the minority, mostly urban, section of the society and ignored the majority rural population who suffer and die from diseases of poverty. The women of child-bearing age and children under the age of 5 were seen to shoulder the heaviest burden of ill health in the country, leading to the establishment of the Maternal and Child Health and Family Planning Department in the Ministry of Health. The Department's task is to ensure that family planning, antenatal and post-natal care, immunization, proper nutrition, rehabilitation, child care and hygiene are available to all the mothers and children in the country through health education;

(d) Water and sanitation programme. The water and sanitation programme has reached 78 per cent coverage for water and the provision of Blair ventilated latrines for the rural areas increased from 0 to 24 per cent coverage by 1991;

(e) Disease control. The Department of Epidemiology and Disease Control has the task of ensuring the control of epidemic diseases like malaria, schistosomiasis, leprosy, rabies, tuberculosis and the plague.

202. The economic structural adjustment programme has adversely affected the poor by eroding the gains in social services, particularly education for their children and health care, as a result of cuts in public expenditure and retrenchment of mostly the unskilled and semi-skilled workers. Government subsidies on essential food commodities have been removed. In addition to the adverse effects of structural adjustment, the poor were most seriously affected by the severe drought experienced by the country during the 1991/92 season.

203. The population of the remote rural areas was the hardest hit by the political instability of the neighbouring countries, in particular Mozambique, as they were caught in the crossfire between armed bandits and by the outbreak of such diseases as cholera in these border areas.

204. Assistance to families in need is rendered through the Department of Social Welfare which spearheads events and programmes geared to promoting awareness of family circumstances. The Department of Social Welfare provides assistance where there is a breakdown of the family system by appropriate assistance through the measures described below.

205. The Social Welfare Assistance Act [Chapter 17:06] provides for assistance to destitute children and dependants of destitutes in the form of

financial aid, rehabilitation, institutional nursing, boarding or foster home care, counselling, vocational training, pauper burials, food and clothing. Assistance is also granted to physically handicapped persons. Drought relief handouts are also issued to needy families when there is drought in the country or in a particular area. Once again the Department of Social Welfare, in conjunction with NGOs, assists in distributing such handouts. Families are also assisted through the food-for-work programme which is monitored by the Rural District Councils. To cushion the harsh effects of price increases due to the reform programme, a food subsidy for both rural and urban disadvantaged families has been put in place.

206. In the rural areas an agreement was reached between Government and the Grain Marketing Board to transport maize grain to Approved Sellers who would in turn charge prices affordable to the rural people. The Grain Marketing Board's transport costs are met from the Social Dimension Fund.

207. Recently, Government introduced a Grain Loan Scheme whereby those in need of grain in any year get the grain from Government and pay it back when their situation has improved. Government also provides the rural people with seed and fertilizers. The District Development Fund administered by the Ministry of Local Government, Rural and Urban Development provides tractors to the rural folk for tilling land for a fee or for free depending on the status of the persons concerned. Unfortunately, the demand for free tillage is so high that the service is proving to be inadequate. Government is, however, considering the purchase of 700 more tractors so as to meet the demand.

208. The Social Dimensions Fund (SDF) is a fund which has been set aside by Government to cushion the effects of the economic reform programme. The SDF is administered by the Ministry of Public Service, Labour and Social Welfare. The programme components of SDF consist of:

(a) Education assistance catering for the payment of school fees for families earning less than $400 per month and who cannot afford the said fees;

(b) Health assistance, with the same conditions as above;

(c) Food security, involving disbursement of cash to the urban poor who can no longer afford to pay the escalating food prices.

209. Although the above provision to provide school fees is in place, it takes a long time for school fees to be processed. Though the process of application forms is decentralized to the provinces, payment continues to be centralized and this has resulted in late payments and at times denial of services. Additionally, both the SDF Coordination Unit and the Department of Social Welfare appear to be bureaucratic in the processing of applicants. The former processes cheques at Head Office whereas the latter screens the applicants through home visits conducted by social welfare officers. The other problem is the sheer ignorance of the public. There are many poor people who are not aware of the existence of the SDF not only for school fees but in the area of health and food as well. To circumvent the problem of ignorance, the Coordinating Unit issues pamphlets with information on SDF. School headmasters are also encouraged to assist in the awareness campaign.

210. The Poverty Alleviation Action Plan was established in 1994. Government intends to establish a fund from public expenditure, non-governmental organizations and donor agencies to cater for the needs of the growing poor population. The programme is geared to dealing with structural poverty. It is believed that most problems faced by Zimbabwe are caused by structural poverty. The programme is looking at the root causes of structural poverty so as to attack poverty. By the end of 1995, the first phase was close to being adequately funded.

211. Families are recognized through three types of marriage:

(a) Registered customary marriage. This marriage is between Africans and is solemnized in terms of the Customary Marriages Act [Chapter 5:07]. The marriage is potentially polygamous;

(b) Civil marriage. The marriage is solemnized in terms of the Marriage Act [Chapter 5:11] and it is a monogamous type of marriage;

(c) Unregistered customary law union. This is a marriage generally entered into between African parties. The marriage is recognized in limited cases such as maintenance of the child and inheritance.

212. The voluntary consent of the parties to a marriage is essential for a marriage to be valid under general law. Prior to independence a woman would not marry under any of the three marriages without the consent of her father. A marriage officer was required to be furnished with "an enabling certificate" before he could marry a woman under the Customary Marriages Act. The certificate showed that the women's father had consented to the marriage and that lobola had either been negotiated or settled. The pledging of girls to appease dead men's spirits and for other reasons was also quite rife at this time. With the advent of independence and subsequent enactment of the Legal Age of Majority Act in 1982 (now section 15 of the General Law Amendment Act [Chapter 9:05]), women over 18 can now enter into any type of marriage without the consent of their parents. In practice, however, women feel they still require parental consent if a marriage is to be blessed.

213. It is an offence under section 15 of the Customary Marriages Act to force, intimidate or compel an African woman to enter into a marriage against her will.

214. The Matrimonial Causes Act [Chapter 5:13] regulates the rights and responsibilities of spouses in marriage and upon divorce. Under the Guardianship of Minors Act [Chapter 5:09], guardianship is granted to the father unless the child is illegitimate, in which case guardianship is granted to the mother. Maintenance under the Maintenance Act is payable by both parents in support of the dependent child but the court may order either spouse upon divorce to pay maintenance to the spouse holding custody of the child. Upon divorce, the court may only grant a decree nisi of dissolution on satisfaction that any children's interests are well catered for. In the distribution of assets the courts will take into account the circumstances of both spouses, including the wife's contribution to family finance and caring for the family.

215. The Maintenance Orders (Facilities for Enforcement) Act [Chapter 5:10] provides for regulations to be made for the payment of maintenance by a person living abroad but who has financial responsibility for a child in Zimbabwe. Some parents are, however, not aware of this extraterritorial facility. Therefore, there is need for awareness-creation among communities of the existence of the legislation.

Article 24

216. The Constitution in section 23 makes it unlawful to discriminate on the grounds of race, colour, language, religion and political difference and makes unlawful and void any law, agreement or practice that discriminates on these grounds. This applies to children as well as adults.

217. The Government of Zimbabwe is also doing a lot to improve and protect the rights of children. Zimbabwe ratified the Convention on the Rights of the Child on 11 November 1990 and the African Charter on the Rights and Welfare of the Child on 22 March 1995. Government has submitted its first report on the Convention. There is already legislation in place to protect children in various ways.

218. Generally every citizen is afforded the right to life. This right is provided for in section 12 of the Constitution. Specifically, children are further entitled to the right to life and are protected by the Concealment of Birth Act [Chapter 9:04] and the Infanticide Act [Chapter 9:12] which respectively make it an offence to conceal the birth of a child or to kill an infant.

219. Parents are obliged to maintain their children during marriage and after the dissolution of a marriage. In divorce proceedings, courts have power to withhold the dissolution of marriage until satisfied that the interests of children are well provided for. Under the Maintenance Act [Chapter 5:09] the court has power to order either of the spouses to pay maintenance to the spouse holding custody of the child. The State, therefore, through the judiciary, recognizes the rights and interests of minor children as paramount.

220. Children are also afforded the right to the highest standards of health and medical care attainable, as fully explained under article 23 above. The Public Health Act [Chapter 5:09] provides for the control of communicable diseases and the provision of infectious diseases notification and services. Immunization is provided in both urban and rural clinics free of charge. Counselling is also offered to mothers on how to look after the health of their children. The Public Health Act is being revised with the intention of reflecting the Primary Health Care approach.

221. Government ensures that children are well looked after by their parents. The Children's Protection and Adoption Act [Chapter 5:06] makes it an offence punishable by law for parents to ill-treat, neglect or abandon their children. A parent who is found guilty of wilfully neglecting his/her child can be convicted of a criminal offence. The Act also protects children from exposure to indecent and immoral surroundings.

222. Children are also protected from abuse, sexually or otherwise. A special court, the Juvenile Court, is empowered to inquire into the well-being of children who are either abused or neglected. Parents are summoned to come forward to the court and the court has power to remove children from their parents and put them in the care of the Department of Social Welfare. The Department of Social Welfare in turn puts such children in homes or institutions. Parents of abused children are compelled by the law to assist financially (where applicable) in the looking after of their children who have been put in institutions.

223. Government also protects children from sexual exploitation by prohibiting through legislation the solemnization of a marriage by a minor. Section 22 (1) of the Marriages Act provides the minimum legal age of marriage as 18 years for boys and 16 years for girls. Where minors purport to contract a marriage, such a marriage will not be valid unless it is done with the written consent of the Minister of Justice, Legal and Parliamentary Affairs. Section 11 of the Customary Marriages Act [Chapter 5:07] prohibits the pledging of a girl under 12 years of age and also of women. However, there is no specific provision which fixes the minimum age of marriage under customary law. Consequently, a minor above 12 years of age can contract a valid marriage with the consent of her parents or legal guardian. This is one area which the Government must address so as to effectively protect children from abuse. It must be pointed out that the relevant ministry is looking into the matter of specifying a minimum age for marriage.

224. Under the Labour Relations Act [Chapter 28:01], it is presumed that the minimum age for employment is 16 years. The presumption is based on the provisions of section 11 of the Act. The section provides that if anyone under the age of 16 years enters into a contract of employment, even with the consent of the parent or guardian, the contract is not enforceable except in the case of apprenticeship. The provision has been recognized by Government to be inadequate. Consequently, Government has established a Child Labour Task Force to look into the issue of child labour. The Task Force has a wide membership drawn from government ministries, employer and employee organizations and NGOs.

225. The Child Labour Task Force has realized that there are a lot of children engaged in paid employment but the nature and extent of the children involved has not been defined. From the information gathered during the 1992 Population Census, it was established that Zimbabwe had a total 1,456,751 children aged 10-14 years. About 3 per cent of these children were employed, of whom 15,376 were paid employees, 21,059 unpaid family workers, 2,121 own-account workers and 4 employers. Three per cent of the children aged 10-14 years (44,569 children) also stated that they were looking for work. It is estimated that there are about 10,000 street children. It must be noted that the information provided is based only on children aged 10-14 years.

226. A consultant has been engaged through UNICEF to study the situation and extent of the whole area of children in difficult circumstances. The Child Labour Task Force has now reached the stage of recommending the drafting of legislation which will address the problem of child labour, among other issues.

227. The capacity of the available children's homes is now failing to meet the demand. The Government's emphasis is to encourage fostering within the extended family and proposals to increase the present level of foster fees have been made. The problem of orphans has been aggravated by the AIDS epidemic. Government has reacted to the situation by establishing a national committee composed of government officials and NGO representatives. The committee, which is chaired by the Department of Social Welfare, has been tasked to come up with an Orphan Care Policy which broadly represents the interests of orphan children, e.g. health, education, legal, social, etc. A document which has been produced by the Committee was submitted to the Department of Social Welfare in August 1995 for onward transmission to Cabinet.

228. Disabled children are specifically protected by the provisions of the Disabled Persons Act [Chapter 17:01] which was passed for the purposes of looking after disabled persons and ensuring that they are not discriminated against on the grounds of their disability. The interests of disabled children are also being addressed under the programme for children in especially difficult circumstances. It is estimated that there are about 140,000 disabled children in Zimbabwe, based on the Government Survey on Disability of 1982. The National Programme of Children in Zimbabwe intends to improve the identification of disability at district and provincial level and increase facilities for the integration of disabled children into ordinary schools.

Child welfare and protection

229. The Child Protection and Adoption Act [Chapter 5:06] outlines the need for protection and care of children. According to the Act it is an offence for a parent or a guardian to assault, ill-treat, neglect, abandon or expose a child to any treatment that will harm the child's health or morals. It is also an offence for a parent or guardian who can afford to do so to fail to provide adequate food, clothing and health care or to leave an infant unattended under circumstances that could cause the child physical or mental stress or harm. The Act empowers the juvenile courts to investigate allegations of such abuse and to determine what steps can be taken in the best interests of the child.

230. It is admitted that in Zimbabwe there are groups of children who do not enjoy the measures of protection and assistance offered by the State due to ignorance, irresponsibility of parents or guardians, and the failure of government agents like social welfare officers to reach the affected children. Children are also exploited because of poverty and economic hardships brought about by some negative aspects of economic liberalization. Children are also disadvantaged because some laws have loopholes or they are not implemented. For instance, although the Liquor Act, 1984 prohibits children from entering bars and bottle stores there is no law which prohibits the sale of alcohol to children from general stores and supermarkets.

Registration of births

231. The Births and Deaths Registration Act [Chapter 5:02] provides for compulsory registration of births and deaths in Zimbabwe. It makes it a duty

for the father and mother of a child to register their child within 42 days of its birth. Only the child's legal guardian can change the child's name. Generally, children acquire the surname of their father except where the children are born out of wedlock. In such situations the child takes the mother's name.

232. Section 13 of the Births and Deaths Act allows for the registration of a child born outside Zimbabwe if the father or, if the child is illegitimate, the mother is a citizen of Zimbabwe. Sections 15 and 16 provide for the registration of abandoned children.

Citizenship

233. Chapter II of the Constitution provides for the right of every person born in Zimbabwe to be a citizen as long as the father is a citizen of Zimbabwe and, in the case of aliens, he is not an enemy alien. Children who are born in Zimbabwe acquire Zimbabwean nationality by birth.

234. Children who are born outside Zimbabwe acquire citizenship if the father or, in the case of an illegitimate child, the mother is at the time of birth a citizen of Zimbabwe. Children who are born to residents of Zimbabwe become citizens by virtue of birth even though the parents may not be citizens (section 5 of the Constitution). The Citizenship Act specifically provides for the procedures which need to be followed for registration of citizenship.

Article 25

235. A person's freedom of assembly and association, freedom of expression and freedom of movement, enshrined in the Constitution of Zimbabwe, guarantee his right to participate freely in the government of his country, equal access to the public service and access to public property.

236. The electoral laws of Zimbabwe, governed by the Constitution and the Electoral Act [Chapter 2:01] 1990, confers the right to vote on citizens of Zimbabwe who are above the age of 18. The peoples of Zimbabwe are therefore able to choose their political leaders freely. Through representatives in Parliament the people of Zimbabwe can determine their political status and pursue their economic and social development.

Voting rights

237. Voting is by secret ballot and is not compulsory in Zimbabwe. There are, however, qualifying conditions for eligibility to vote in both the general and presidential elections. Schedule 3 of the Constitution outlines these conditions. One must be a citizen of Zimbabwe; have attained 18 years of age; and have been permanently resident in Zimbabwe as from 31 December 1985.

Disqualification of voters

238. The following persons are disqualified from voting in both general and presidential elections under Schedule 3 mentioned above:

(a) Persons who are mentally disordered or defective;

(b) Persons who have been declared by the High Court to be incapable of managing their own affairs, e.g. insolvent persons;

(c) Persons who have been convicted of an offence, either in or out of Zimbabwe, whose minimum penalty exceeds six months;

(d) Persons who have been convicted of an offence under the Electoral Law and declared disqualified by the High Court for a particular period;

(e) Persons expelled from Parliament;

(f) Persons under preventive detention for more than six months (not applicable when there is no state of emergency).

Qualifications for Members of Parliament

239. The qualifying conditions are outlined in Schedule 3 and are basically three:

(a) To be registered as a voter;

(b) To have attained 21 years;

(c) To have resided in Zimbabwe for not less than 5 years during the 20 years preceding his nomination.

240. A candidate therefore does not necessarily have to be a citizen but must be a permanent resident.

Postal voting

241. Part XV of the Electoral Act provides for postal voting. An application for a postal vote is made to the constituency registrar on a special form whereon a person confirms that he or she:

(a) Has reason to believe that he or she will not be in the constituency on polling day;

(b) Has good reason to believe that, by reason of ill-health or infirmity or some similar cause or because of duty as a member of a disciplined force, he or she will be prevented from attending at a polling station on polling day;

(c) Lives more than 20 kilometres from the nearest polling station.

242. If the constituency registrar is satisfied that the application is properly completed and that the applicant is qualified to vote, he will issue to the applicant the ballot form that is being used by all the other voters. The constituency registrar will keep all the postal votes in a special postal ballot box, which is not opened until after voting has closed.

Election petition

243. An election petition may be presented to the High Court by individuals or parties who feel that their rights to participate freely in the electoral process have been tampered with (Part XXII of the Electoral Act). The petition may be presented within 30 days of notification of election results. The petition takes the form of a trial before the High Court. The court may, after deciding there was corrupt or illegal practice, declare the election void.

Political parties

244. All citizens are able to form and join a political party. Political parties are not restricted in any of their activities. Eligible voters can vote for any candidate or whichever party promises to serve their interests.

245. The Political Parties (Finance) Act [Chapter 2:04] provides for the financing of the political parties. Parties have to register with an executive authority in order to receive the grant from the State. The total amount payable is proportional to the number of elected party representatives who are members of Parliament, provided they are no fewer than 15. The Minister may reject the application and the party can appeal against his decision to the High Court. There are at present about five prominent parties in Zimbabwe. Only the ruling party, ZANU PF, qualifies for the grant and receives $32,000,000 every year from the Government Treasury.

Main bodies and officials in the electoral process

246. There are three main bodies in the running of the general election. The Electoral Supervisory Commission, established in terms of section 61 of the Constitution, ensures that elections are conducted freely and fairly. The Electoral Supervisory Commission supervises by-elections and general elections, reporting any discrepancies or irregularities observed. However, the Commission does not supervise presidential elections because it is not empowered to do so. But Government is in the process of amending the Constitution so as to give the Electoral Supervisory Commission power to supervise presidential elections.

247. The idea of having an Electoral Supervisory Commission is a progressive one. But the opposition parties question the impartiality of the Commission because all its members are appointed by the President. It should, however, be noted that the Chairman is appointed after the President has consulted the Judicial Service Commission and the other members after consulting the Speaker of Parliament. Further, the Commission is composed of five members who are expected to cover the whole country of Zimbabwe during general elections. The Commission is limited in financial resources. However, Government would in future like to strengthen the functions of the Electoral Supervisory Commission. A study is being carried out by senior government officials to establish how best the Electoral Supervisory Commission can operate.

248. Section 4 of the Electoral Act provides for the appointment of members of the Election Directorate. The Directorate consists of a chairman, appointed by the President; the Registrar-General of Elections; at least 2 and

not more than 10 other members (who may be public servants), appointed by the Minister of Justice, Legal and Parliamentary Affairs. The functions of the Elections Directorate are:

(a) Coordinating the activities of ministries and departments of Government in regard to the delimitation of constituencies, the registration of voters, the conduct of polls and all other matters connected with elections;

(b) Issuing instructions and making recommendations to the Registrar-General in regard to the exercise of his functions;

(c) Issuing instructions and recommending to other public servants for the purpose of ensuring the efficient, proper, free and fair conduct of elections;

(d) Generally ensuring that elections are conducted efficiently, properly, freely and fairly.

249. A Delimitation Commission is appointed by the President in terms of section 59 of the Constitution. The Chairman is the Chief Justice or another judge of Supreme Court or High Court, appointed after consultation with the Chief Justice, and three other members, appointed after consultation with the Chief Justice. Members of Parliament may not be appointed to this body. A Delimitation Commission must be appointed at least every five years, but may be appointed earlier, if the President feels it is necessary or expedient to do so. In conducting its work the Commission will rely on a new registration book of voters, so this has to precede its existence.

250. The function of the Delimitation Commission is to decide the limits of the constituencies into which the country is divided (at present there are 120 constituencies). The boundaries of the constituencies should be such that each constituency has roughly the same number of registered voters. The Commission will, when deciding where the constituency boundaries are to be, give consideration to the physical sections of the constituency; the means of communication in the area; how the voters are distributed geographically; any community of interest between the voters; and existing constituency boundaries.

251. When the Delimitation Commission has completed its work a report is submitted to the President. The President may direct the Commission to reconsider certain issues arising out of the report. When he has accepted the Delimitation Commission's final report, the President will issue a proclamation setting out the constituencies' names and boundaries. The last report of the Delimitation Commission was submitted to the President in January 1995 preceding the general election that took place in 1995.

Local government elections

252. The people of Zimbabwe also have the right to determine their political status and to pursue their economic and social development according to the policy they have freely chosen through participation in local government elections.

253. Local government elections are monitored by the Ministry of Local Government, Rural and Urban Development. They are conducted in terms of the Urban Councils Act [Chapter 29:15] for urban areas and in terms of the Rural District Councils Act [Chapter 29:13] for rural and district areas. In local government elections all residents of the local authorities aged 18 years and above are eligible to vote except where they are disqualified by the law. Legislation which governs local government elections prohibits disqualification on the grounds of race, tribe, religion, sex, creed and colour.

254. Currently, there is a proposal to extend the functions of the Electoral Supervisory Commission so that it monitors local government elections. Such supervision will ensure transparency in local government elections.

255. Local government institutions in Zimbabwe take the form of elected local authorities and boards. The Constitution defines local authorities as any councils or other such bodies established by or under any law to regulate the affairs of any local community and to make statutory instruments for that purpose. Councillors who are elected to local authorities have a duty to enhance developmental programmes in the wards which they represent. In legislation made in terms of the Constitution, all local authorities in Zimbabwe are deemed to be the local planning authorities in relation to the planning and development of their areas. This designation, in practice, denotes a shift from central government bureaucracy as the prime initiator of development planning and implementation and confers the planning and development responsibility on the elected local democratic forum, with central government lending necessary support and coordination. This in itself signifies deliberate recognition by the State of the individual rights of the citizen, such as the right to freedom of expression, and to a sizeable extent it guarantees the right of the citizen to determine his own destiny and purpose, through free expression using the democratic local authority forum. In addition, the State has also recognized traditional leaders, that is chiefs and headmen, and has accorded them their full customary role in the local authorities and the community at large. This combination of authorities has had the effect of combining the old and the new and has thus ensured cultural integration as well as protection of rights across the traditional and modernized cultural divide.

256. In Zimbabwe, individuals or parties who feel that their rights to participate freely in the electoral process have been tampered with can turn to the courts for recourse. This has happened recently in the case of Margaret Dongo v. Vivian Mwashita and Registrar-General of Elections and Chairman, Electoral Supervisory Commission and Chairman Election Directorate HC 106/95. In the case, Margaret Dongo successfully petitioned the High Court to set aside the results of a parliamentary election in which she had an interest. She based her petition on alleged irregularities in the election.

257. In Zimbabwe every citizen and permanent resident has the right to equal access to all public services such as education, medical services, the legal system and others. However, economic constraints limit the ability of a sizeable proportion of the unemployed and low-income and other vulnerable groups to utilize the increasingly costly services. The Government has

provided the Social Dimensions Fund and Poverty Alleviation Fund (as discussed above in article 23) for the groups just mentioned to cushion them from the effects of the cost recovery programme necessitated by the economic structural adjustment programme. However, soaring prices still render these services unaffordable for many people who will continue to be socially and economically deprived.

Article 26

258. In Zimbabwe all persons are equal before the law and are entitled to equal protection of the law without discrimination. Section 23 of the Constitution grants protection to individuals from any law that has discriminatory provisions or from treatment in a discriminatory manner by any person acting by virtue of any written law.

Article 27

259. Zimbabwe is a multicultural society and within it are ethnic, cultural and linguistic minorities. As explained in article 13 and article 15, the Ministry of Education not only promotes the use and development of all local languages, minority languages included, but also encourages the manifestation, practice and promotion of all cultures which make up Zimbabwean society.

260. The decentralization thrust by the Ministry takes cognizance of the need to make education more relevant, not only in economic terms but also in socio-cultural terms. This position further promotes and protects the right to culture.

261. Whilst every child must be taught in its mother tongue during the first three years of primary education, for logistical reasons it has not been possible to teach all languages beyond the grade 3 level. The production of textbooks for cultural minorities requires not only the identification of talented writers, but also the resources to facilitate their publication. Where these ethnic and linguistic minorities are numerous, as is the case with Zimbabwe, the production of such materials can be prohibitively expensive. The teachers for such languages may also be hard to secure. The constraints currently facing the Ministry have not made the teaching of more minority languages beyond grade 3 level possible, but the situation is being constantly reviewed.

262. There are still pockets of minority ethnic groups whose cultural practices conflict with other fundamental human rights. Some of these practices are early marriages, usually arranged between parents without the consent of the individuals concerned, circumcision practices, and the pledging of girls for economic gain (kuzvarira) or as appeasement to the spirits of a murdered person (kuripa ngozi). Education plays a part in changing such practices. The inclusion of civil and political rights in the school curriculum and the promotion of different cultures are some of the strategies used to change such practices.